

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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AUG 20 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

BRUCE T.,)	
)	
)	2 CA-JV 2009-0043
Appellant,)	DEPARTMENT B
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
CHRISTENE N. and DEVON T.,)	Rule 28, Rules of Civil
)	Appellate Procedure
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18730699

Honorable Ted B. Borek, Judge

AFFIRMED

Joan Spurney Caplan

Tucson
Attorney for Appellant

David K. Kovalik

Tucson
Attorney for Appellee Christene N.

E C K E R S T R O M, Presiding Judge.

¶1 Appellant Bruce T. is the biological father of Devon T., born in February 1999.

Devon’s mother, Christene, initiated a private severance action in July 2008 by filing a

petition to terminate Bruce's parental rights to Devon pursuant to A.R.S. § 8-533(B)(1), (2), (3), and (4). Following a contested termination hearing in March 2009, the juvenile court found Christene had established two of the four statutory grounds alleged and ordered Bruce's parental rights terminated based on abandonment, § 8-533(B)(1), and length of incarceration, § 8-533(B)(4). The court also found severance was in Devon's best interests. For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent's rights only if it finds by clear and convincing evidence that a statutory ground for severance exists and finds by a preponderance of the evidence that severance is in the child's best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). On review, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). Bruce and Christene, who were never married to each other, lived together for approximately thirteen months after Devon was born. Their relationship was fraught with domestic violence, resulting in Bruce's incarceration from approximately 2001 until 2004 for violating various orders of protection. In one incident for which he was arrested, Bruce

“flipped the mattress over the top of [Christene] and then . . . threw a lamp at [her] head and then tried to suffocate [her]” before ultimately chasing her with a gun. Bruce appeared at the severance hearing by telephone from an Oklahoma prison, where he is serving a sentence for an unrelated conviction for trafficking in stolen property. He testified he began serving his current sentence in 2006 and anticipated an early release date in 2009, with a sentence expiration date in 2010.¹

¶4 According to the testimony of Kadie Goodwin, the individual retained by Christene to prepare a social study of the family,² Bruce “did not want to take care of [Devon]” while the couple lived together. Goodwin summarized Christene’s description of her history with Bruce as follows:

The father abused the minor by leaving him hungry and unbathed. He threatened to kill the mother in front of the child when the child was two years of age. The father had chased the mother with a gun while she was holding the child. He set fire to the mother’s house, [and] ran the mother’s car off the road while the minor was in the car.

Goodwin explained that, although Bruce had denied allegations that he had run Christene’s car off the road or set fire to her house, he had admitted all of the other allegations. Bruce

¹Instead of considering the parent’s anticipated release date, the court instead considers the actual length of the sentence, independent of whether an earlier release might be possible. *See James S. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 351, n.3, 972 P.2d 684, 687 n.3 (App. 1998).

²Bruce concedes that he stipulated to Goodwin’s qualifications to perform the social study. To the extent he now suggests that she was not qualified, he has waived this argument on appeal.

did not view his conduct to be “as bad as” Christene thought it was and did not think Christene “should be as afraid of him as she is.”

¶5 Bruce acknowledged at the 2009 severance hearing that he had not seen Devon since 2001. Although Bruce had established his paternity, he did not provide any financial support for Devon, nor request any parenting time with him, even when Bruce was not incarcerated. He testified that, after his release from prison in 2004, he “didn’t want to be around [Devon] because . . . [he] was doing drugs and just doing bad things.”

¶6 Greg, Christene’s boyfriend of three years, testified that he is a “father figure” to Devon. Greg takes Devon to school daily, assures he packs his lunch, helps him with homework, makes sure he has done his chores, and takes him bicycle riding. Greg testified that he has thought about adopting Devon in the future. Goodwin provided similar testimony about Greg’s relationship with Devon.

¶7 Bruce does not challenge the grounds for termination but instead challenges the sufficiency of the evidence to support the juvenile court’s best-interests determination, suggesting the court mistakenly equated the grounds for severance with its best-interests finding. We thus address only the evidence related to the best-interests portion of the court’s ruling. That severing a parent’s rights will serve the best interests of the child “may be established by either showing an affirmative benefit to the child by removal or a detriment to the child by continuing in the relationship.” *Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 189 Ariz. 553, 557, 944 P.2d 68, 72 (App. 1997). At the termination hearing, Bruce argued that,

because he “does not have a history of abiding by court orders . . . any hope that a severance order is going to somehow ensure stability for Devon doesn’t exist.” He similarly argues on appeal that it is speculative to presume termination would enhance Christene’s ability to protect Devon from him and there was no evidence that severing his parental rights would either provide a benefit or prevent a detriment to Devon.

¶8 Goodwin opined it would be in Devon’s best interests to terminate Bruce’s relationship with him for the following reasons:

[Bruce] has had no meaningful contact with his child since his birth. He has always used violence to interact with his son He has never supported this child whether it’s with money or whether it’s emotional. He does nothing for this child. I believe that there is a great risk of harm to Devon if [Bruce]’s rights are not terminated and he has any access to this child.

¶9 Christene also testified that severing Bruce’s parental rights would be in Devon’s best interests. She explained that Devon currently has a “stable life” that includes good role models like Greg and that, based on her past experience with Bruce, she “fear[s]” for Devon’s safety and stability if Bruce were permitted to reenter Devon’s life. Notably, Bruce testified Greg has been a positive influence in Devon’s life and it is in Devon’s best interests for that stability to continue.

¶10 The juvenile court thus found by a preponderance of the evidence that the best interests of the child would be served by termination of the parent-child relationship of the father. Devon is living with his mother whose boyfriend, Greg D[.], has become a father figure for Devon. It is in Devon’s interest to maintain the

stability of his relationship with Mr. D[.,] who is open to adopting Devon if there is no impediment to adoption. Moreover, it could be detrimental to Devon to begin a relationship with his father who has provided no support and who has a very volatile relationship with Devon's mother.

¶11 Bruce suggests that, because there is no present plan for Greg to adopt Devon, the juvenile court erroneously relied on the existence of such a plan in making its best-interests determination. But Arizona law does not support that suggestion. *See James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, ¶ 18, 972 P.2d 684, 689 (App. 1998) (evidence of existing adoption plan can be considered benefit to child in best-interests determination). Christene, in turn, seems to contend that, because she and Greg have been together for three years and are now living together, this constitutes an adoptive plan. Although we agree with Bruce that the record does not contain evidence of a present adoptive plan, the court did not rely on any such plan in its best-interests ruling. Nor was the present existence of such a plan essential to the court's best-interests determination. Rather, the court found that terminating Bruce's parental rights would allow the possibility of adoption and that Greg "is open to adopting" Devon.

¶12 Devon lives with his biological mother, the only parent he has ever known. Although his adoption by Greg might provide certain benefits to Devon, the court's finding that termination is in Devon's best interests did not depend on that occurring. The record is replete with evidence of the violent history between Bruce and Christene and the negative effect that history has had on Devon. This, combined with the fact that Bruce's entry into

Devon's currently stable existence could jeopardize that stability and place Devon's safety at risk, supports the conclusion that termination was in Devon's best interests.

¶13 Having found substantial evidence to support the juvenile court's order terminating Bruce's parental rights to Devon, we affirm that order.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

GARYE L. VÁSQUEZ, Judge